

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**MARCUS A. TAYLOR**

**APPELLANT,**

**v.  
STATE OF MISSOURI**

**RESPONDENT.**

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DOCKET NUMBER WD73193 Consolidated with WD75348  
DATE: July 16, 2013

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Appeal From:

Randolph County Circuit Court  
The Honorable Ralph H. Jaynes, Judge

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Appellate Judges:

Division One: Gary D. Witt, Presiding Judge, Thomas H. Newton, Judge and Mark D. Pfeiffer, Judge

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Attorneys:

Rosalynn Koch, Columbia, MO, for appellant.

Dora Fichter, Jefferson City, MO, for respondent.

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
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**MARCUS A. TAYLOR,**

**APPELLANT,**

**v.**

**STATE OF MISSOURI,**

**RESPONDENT.**

No. WD73193 Consolidated with WD75348

Randolph County

Before Division One: Gary D. Witt, Presiding Judge, Thomas H. Newton, Judge and Mark D. Pfeiffer, Judge

Marcus Taylor appeals from the denial of his Rule 24.035 motion after an evidentiary hearing. He argues that his plea counsel did not act as a reasonably competent attorney on the ground that counsel failed to advise him of a defense to first-degree robbery, for which he entered a plea of guilty. Taylor claims that evidence, in the form of video surveillance, established that the State could only prove the elements of second-degree robbery. He argues that the gun that he used in the robbery was a pellet gun and not a firearm and that the store clerk identified the gun as a pellet gun.

**AFFIRMED**

**Division One Holds:**

The motion court did not clearly err in denying Taylor's motion for post-conviction relief. Taylor failed to show that his counsel failed to exercise the level of skill and diligence that a reasonably competent attorney would exercise in a similar situation under the performance prong of *Strickland* because the pellet gun he used to commit the robbery was sufficient to support a conviction of robbery in the first degree. The pellet gun closely resembled a .45 caliber handgun, Taylor partially concealed the gun to prevent the clerk from discovering that it was not a firearm, and it was only after the clerk had complied with Taylor's demands for the money that the clerk was able to determine that the weapon was not a firearm but merely a pellet gun. The defense that Taylor alleges his counsel should have used would not have been successful and therefore the failure to proceed on those grounds was not ineffective assistance of counsel.

Opinion by Gary D. Witt, Judge

July 16, 2013

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